



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 33168811

Date: SEP. 19, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks to classify himself as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition. Although the Director concluded that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award, the Director determined that, in the alternative, the record satisfies at least three of the 10 initial evidentiary criteria. However, the Director ultimately concluded that the record does not establish sustained national or international acclaim and that the Petitioner is among the small percentage at the very top of the field of endeavor. The Director further concluded that the record does not establish that the Petitioner would be coming to the United States to continue work in the area of expertise. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the [noncitizen]’s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) “do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.” 8 C.F.R. § 204.5(h)(4).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

## II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award; however, the Director determined that, in the alternative, the record satisfies at least three of the 10 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, the Director found that the record satisfies the plain language of the criteria at 8 C.F.R. § 204.5(h)(3)(iv)-(vi). However, the Director concluded, upon examining the evidence presented in its entirety for the final merits determination addressed in *Kazarian*, that the record does not show sustained national or international acclaim or that the Petitioner is among the small percentage at the top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)).

More specifically, the Director acknowledged that the Petitioner participated in the “routine process in the field” of peer-review. However, the Director noted that the record establishes that the Petitioner peer-reviewed 12 papers for scholarly journals between 2007-15, among other invitations to participate, which neither “exceeds that of other researchers nor indicates [he is] at the very top of [his] field with sustained acclaim.” Moreover, the Director observed that the record does not indicate the Petitioner has participated in peer review since April 2015, “which establishes an inconsistent (and infrequent) record of reviewing peer research.”

The Director also acknowledged that the Petitioner published two scholarly papers in 2007 and 2010, respectively. However, the Director found that the record does not establish “how such production is indicative of someone who is at the very top of the mechanical engineering field with sustained acclaim.” The Director acknowledged the citation record for the Petitioner’s two scholarly

publications, describing the citation record for the 2007 publication as “majorly significant.” However, the Director juxtaposed the Petitioner’s citation records with those at the very top of their field, noting that those at the very top of their field would have received “tens of thousands of citations (in total)” more than the Petitioner’s approximately 2,400 total citations. The Director also noted that those at the very top of their field would have “published hundreds of research papers” compared to the Petitioner’s two publications, and that several of those hundreds of publications would have received thousands of citations apiece. The Director further noted that the Petitioner’s publication history ceased in 2010, which does not demonstrate sustained acclaim as a researcher thereafter.

On appeal, the Petitioner emphasizes that his “field is Nanofluid and not Mechanical Engineering so he should be considered as whether he has risen at the top in field of Nanofluid and not at the top in field of Mechanical Engineering [sic].” He reiterates information already in the record regarding his participation as a peer reviewer of scholarly articles between 2007-15, and regarding his scholarly publications dated 2007 and 2010. He characterizes his 2007 publication as a “fundamental paper . . . written once in a decade,” describing his 2010 publication as an “auxiliary paper and hence comparatively less citations.” He juxtaposes “[p]ublishing a landmark paper with 2000 citations” with “someone who has published 200 papers with 10 citations each making total citations to 2000.” The Petitioner also reasserts that he has sustained the acclaim he garnered in 2007 through 2024, noting that he received—but he declined—invitations to peer-review others’ articles a total of five times between 2016-2019 as evidence of his continuing acclaim. He also implies on appeal that the record indicates he is like the William Shakespeare, Michael Jackson, or Usain Bolt of mechanical engineering researchers who specialize in nanofluid.

We first address the Petitioner’s characterization of his field as nanofluid engineering, as opposed to mechanical engineering. We note that, on the Form I-140, Immigrant Petition for Alien Workers, the Petitioner identified his occupation as “Business Relationship Manager,” with the nontechnical job description of “N/A.” Thus, the Petitioner’s own stated occupation appears unrelated to both nanofluid engineering and mechanical engineering.

Even if the Petitioner had sufficiently established that his field is nanofluid engineering—which he did not—neither the number of scholarly research articles the Petitioner has published nor the number of citations—whether individually or in total—his articles have received indicate that the Petitioner is among the small percentage at the very top of the field of endeavor, as contemplated by *Kazarian*. The Petitioner correctly distinguishes between one publication with 2,000 citations and 200 publications with 10 citations apiece; however, without more, neither of those examples indicate an individual among the small percentage at the very top of a particular field of endeavor. The record does not establish how the Petitioner’s two publications, with total citations of approximately 2,400, demonstrate that he is among the very top of the field of endeavor, compared to others in the field of nanofluid engineering research who have substantially more papers published, citations per publication, and total citations. More specifically, the record does not establish what the citation rate of a top nanofluid engineering researcher is through objective evidence. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Thus, although the Petitioner asserts that he is among the small percentage at the top of nanofluid engineering researchers, he does not appear to be at the top of the field of such researchers, based on his relative publication rates and citations.

Even if the Petitioner's two scholarly research publications showed that the Petitioner is among the small percentage at the very top of the field of endeavor, which they do not, they would not demonstrate that the Petitioner sustained such acclaim. Black's Law Dictionary defines "sustain" as "to support or maintain, especially over a long period of time" or "to persist in making (an effort) over a long period of time." *Sustain*, Black's Law Dictionary (11th ed. 2019). To use the Petitioner's example of fundamental and auxiliary papers, the Petitioner has published one fundamental paper and one auxiliary paper, without publishing any additional papers. Because the Petitioner has not published any additional papers—whether fundamental or auxiliary—the record does not establish how he may have sustained any acclaim he accrued in 2007 and 2010 beyond that limited period of time by virtue of subsequent publications.

Next, the Petitioner's participation as a peer reviewer of others' scholarly articles between 2007-15, at an average rate of less than two articles per year during that period does not indicate that the Petitioner is among the small percentage at the very top of the field of endeavor, as contemplated by *Kazarian*. As the Director noted, participating as a peer reviewer of others' scholarly articles is "a routine process in the field." Participating as a peer reviewer of others' scholarly articles at an average rate of less than two articles per year between 2007-15 satisfies the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iv); however, that rate of participation does not establish how the Petitioner may be among the very top of the field of endeavor, beyond merely participating in a routine process. Even if the Petitioner's participation as a peer reviewer of others' scholarly articles between 2007-15 showed that the Petitioner is among the small percentage at the very top of the field of endeavor during that period, which it did not, the record does not establish the Petitioner has participated as a peer reviewer since 2015, which does not support the Petitioner's assertion that he has sustained acclaim as a peer reviewer thereafter. Although the record establishes that the Petitioner was invited to review five additional articles between 2016-19, the record does not establish that the Petitioner actually reviewed those articles. Moreover, as the record does not indicate that the Petitioner has been invited to review any articles after the 2019 invitations, whatever acclaim he may have accrued as a peer reviewer, or a peer reviewer invitee, appears to have ceased many years before he filed the Form I-140 in 2024.

We note that the Petitioner's implication that he is like the William Shakespeare, Michael Jackson, or Usain Bolt of mechanical engineering researchers who specialize in nanofluid is unpersuasive. The Petitioner's two published scholarly articles with a total citation number of approximately 2,400, and his participation as a peer reviewer of 12 scholarly articles do not correspond to the sustained acclaim of William Shakespeare, Michael Jackson, and Usain Bolt as a result of their contributions to their respective fields.

Because the totality of the material provided does not show sustained national or international acclaim and demonstrate that the Petitioner is among the small percentage at the very top of the field of endeavor, the Petitioner is not eligible for the requested classification. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)). We reserve our opinion regarding whether the record establishes the Petitioner would be coming to the United States to continue work in the area of expertise. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

The evidence meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, the totality of the record does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. *See Kazarian*, 596 F.3d at 1119-20. The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. The record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

**ORDER:** The appeal is dismissed.